

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
Plaintiff)
) No. 1:21-cr-10208-NMG
vs.)
)
RESHAT ALKAYISI, ET AL.,)
)
Defendants.)
)
)
)

BEFORE THE HONORABLE NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE
Status Conference

John Joseph Moakley United States Courthouse
Courtroom No. 4
One Courthouse Way
Boston, Massachusetts 02210

September 14, 2023
3:58 p.m.

Kristin M. Kelley, RPR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3209
Boston, Massachusetts 02210
E-mail: kmob929@gmail.com

Mechanical Steno - Computer-Aided Transcript

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P R O C E E D I N G S

THE CLERK: This is Criminal Action No. 21-10208, the United States of America versus Reshat Alkayisi, et al.

Would counsel please introduce themselves for the record.

MS. PORTER: Good afternoon, your Honor. Alatheia Porter on behalf of the United States.

THE COURT: Miss Porter, good afternoon to you.

MR. KRASNOO: Good afternoon, your Honor. James Krasnoo on behalf of Brian Keleman.

THE COURT: Mr. Krasnoo, good afternoon.

MR. SHEA: Good afternoon, your Honor. Mark Shea on behalf of Reshat Alkayisi.

THE COURT: Mr. Shea for Mr. Alkayisi, good afternoon.

MR. DAY: Good afternoon, your Honor. John Day on behalf of defendant Christina Lua.

THE COURT: That was Mr. Day?

MR. DAY: Yes, your Honor.

THE COURT: Mr. Day, good afternoon to you.

MR. GARRITY: Your Honor, good afternoon. Paul Garrity for Mr. Klotz.

THE COURT: Mr. Garrity for Mr. Klotz, yes.

MR. BARRETT: Good afternoon, your Honor. Tim Barrett for Patrick O'Hearn.

THE COURT: Mr. Barrett for Mr. O'Hearn.

1 We have a couple to go. Do I have Ms. Hackett?

2 THE CLERK: Judge, she has not yet signed on. It was
3 decided we would just, since it was close to four o'clock
4 already, that we would proceed without her. I don't know if
5 she's tied up or whatnot.

6 THE COURT: Fair enough. How about Mr. Norkunas? Do
7 we have him?

8 You're muted, Mr. Norkunas.

9 MS. PORTER: I don't think he's turned on his
04:00 10 microphone or joined the audio.

11 THE COURT: I have the same problem, Mr. Norkunas,
12 quite often. Maybe we'll have to use sign language for him.

13 How about Mr. Dominguez?

14 MR. DOMINGUEZ: Good afternoon, your Honor. Carlos
15 Dominguez on behalf of Eric Daneault.

16 THE COURT: Thank you, Mr. Dominguez.

17 So the only one we are missing is Ms. Hackett and
18 Mr. Norkunas has some technical problems, but at least perhaps
19 we can go forward and if there is a problem, Mr. Norkunas, you
04:01 20 can give us the "hi" sign. Okay? All right.

21 We are here on a status conference in this
22 multi-defendant case in which there are, as I understand it,
23 four motions to suppress that are still outstanding. I'm not
24 clear as to why, but certainly the Court takes some blame as to
25 why they have not been resolved sooner since they were filed

1 back early in 2023.

2 The Court has determined that it is going to deny
3 three of the four motions. It expects to deny request No. 84,
4 Mr. O'Hearn's motion to suppress evidence seized at his
5 Braintree residence pursuant to a search warrant, which is
6 docket 295, and defendant Alkayisi's motion to suppress, docket
7 No. 302.

8 With respect to defendant O'Hearn's motion to suppress
9 statements, which is a separate motion, docket No. 298, the
04:02 10 Court would like the government to file a further briefing on
11 the following issue: In its response to defendant O'Hearn's
12 motion to suppress statements, the government contends that the
13 motion is moot because it does not intend to offer
14 Mr. O'Hearn's statements at trial. Did the government,
15 however, use Mr. O'Hearn's statements to retrieve other
16 admissible evidence and, if so, is that evidence not the fruit
17 of the proverbial poisonous tree? I'd like the government to
18 brief that subject within a week and then the Court will rule
19 formally on all four motions to suppress very soon thereafter.

04:03 20 I do understand that this case is at least currently
21 marked for trial to begin on Monday, November 6.

22 Is there anything else that you would like to call to
23 my attention? I'll start with the Assistant United States
24 Attorney, Miss Porter.

25 MS. PORTER: Yes, your Honor. I understood that

1 defendant Watson, who is represented by Ms. Hackett, who is not
2 here, had filed a motion to continue the trial as to him since
3 she was just recently appointed. I had heard from a number of
4 other counsel for other defendants in the case that they also
5 would like to continue the trial date. The government is
6 prepared to go forward. There are still eight defendants left
7 in the case. I believe two additional defendants we are likely
8 to resolve short of trial, potentially an additional three
9 defendants. That would leave five remaining.

04:04 10 So I wanted to get before the Court as soon as
11 possible given the impending trial date and also that pretrial
12 filings will be due a week after what the Court has set for the
13 status conference for Mr. Watson, so I had requested that we
14 get before your Honor in case other defendants did wish to seek
15 a continuance so that we could move that trial date.

16 THE COURT: Tell me. Are any of the defendants
17 incarcerated?

18 MS. PORTER: Yes, your Honor. Defendant Alkayisi is
19 in custody. Defendant Watson is in custody. Emil Dzabiev is
04:05 20 in custody. The other defendants who are in custody, I
21 believe, we will be resolving the case.

22 That includes Mr. Daneault. We have been in
23 discussions. I believe it's likely, Mr. Dominguez can speak to
24 that, but I believe that will be resolved via plea.

25 THE COURT: All right. I'll hear from defense

1 counsel. Probably it would be easier to go around with me
2 directing so that you all aren't interrupting one another.

3 Mr. Shea on behalf of defendant Alkayisi, do you wish
4 to be heard?

5 MR. SHEA: Yes, please, your Honor. My client would
6 like a continuance of the trial date under Rule 36. I
7 discussed it with him. As you pointed out, he is
8 incarcerated --

9 THE COURT: Wait a minute. I'm having trouble,
04:06 10 Mr. Shea. You're breaking up a little bit. I didn't hear
11 those dates that you gave me.

12 MR. SHEA: I didn't. I was just saying that we waive
13 Rule 36 and my client does not have a problem with moving the
14 trial date. He would like to go through discovery, which has
15 been a problem to get access to it at Wyatt.

16 THE COURT: I heard most of that except what did I
17 hear about 136? What's that?

18 MR. KRASNOO: He said, your Honor, he was waiving Rule
19 36.

04:06 20 THE COURT: Thank you, Mr. Krasnoo.

21 MR. KRASNOO: That's the advantage of having hearing
22 aids, your Honor.

23 THE COURT: Maybe I should have them too.

24 Mr. Shea, anything else?

25 MR. SHEA: The one thing on a trial date, Judge, the

1 parties had talked about March. I don't know if the Court was
2 aware of that. For my client, he pointed out to me, rightly
3 so, that that is the time of Ramadan and he is a practicing
4 Muslim. So being on trial while he was fasting from morning
5 until night would be difficult and he asked me to bring that to
6 the Court's attention.

7 THE COURT: All right. That's defendant No. 1.
8 Mr. Krasnoo on behalf of Keleman?

9 MR. KRASNOO: Yes. I would like a continuance past
04:07 10 the current date for the reason I had complete shoulder
11 replacement surgery July 18. I was out until September 6. I'm
12 not back full-time. I get extremely tired around this time of
13 day. The sole reason I'm at the office now is because it was
14 scheduled for 3:45 to 4 o'clock. I don't have a full energy
15 level back. I expect that will dissipate over the next four to
16 five weeks while I'm getting physical therapy twice a week as
17 well.

18 Does your Honor go full days for trial?

19 THE COURT: Yes. My full days I go to 3 or 3:30. I
04:08 20 don't go after 3:30, but I do have afternoon sessions most
21 days. Sometimes the afternoon business will take precedence.
22 I would say most of the time we go what I call a two-thirds
23 day, nine to one, break for lunch until two and then go to 3 or
24 3:30 in the afternoon.

25 MR. KRASNOO: Then I would definitely request a

1 continuance, your Honor. I'm likely to have continued physical
2 therapy. I'm in it twice a week now and it looks like it's
3 going to be a six to seven week period of time. I already
4 started it two weeks ago. Up until then I was confined to the
5 house doing home exercises. I would never be able to get back
6 to my therapist in Tewksbury on the time schedule of the trial
7 and I need that.

8 THE COURT: So we're looking for a couple of months?
9 Is that it?

04:09 10 MR. KRASNOO: I could be comfortable, your Honor,
11 anywhere from January on. I recognize there were discussions
12 from other people with March or April. I'm comfortable with
13 that. So is my client. I've discussed with him that there
14 were certain co-counsel that needed a continuance if they could
15 get it and did he have any problems with that. He said no,
16 even though there was a passage of time that is a concern to
17 all of us.

18 THE COURT: Mr. Dominguez.

19 MR. DOMINGUEZ: Your Honor, we do not oppose a
04:10 20 continuance of the trial date. Having said that, AUSA Porter
21 accurately stated that we are in negotiations and very close to
22 having a plea agreement signed and also scheduling a Rule 11
23 hearing.

24 THE COURT: All right. Thank you.

25 Ms. Hackett is not with us, so I can't get her, but I

1 understand that she was just appointed within the last month.
2 It is understandable that she would like some additional time
3 before trial.

4 Mr. Norkunas, on behalf of defendant Dzabiev. We have
5 the sound problem. Why don't you give me a sign "yes" or "no"
6 if you're seeking a continuance.

7 You are seeking a continuance. Are you agreeing that
8 three or four months is what you need? Okay. So we're looking
9 at, at least from Mr. Norkunas's point of view, early spring,
04:11 10 February, March, or April. Okay.

11 How about Mr. Garrity on behalf of defendant Klotz?

12 MR. GARRITY: Your Honor, I'm never opposed to a
13 continuance. I've never opposed. I think I'm in a position
14 like Mr. Dominguez. We're most likely going to be entering a
15 plea agreement and resolve it that way.

16 THE COURT: All right. Thank you, Mr. Garrity.

17 Mr. Barrett on behalf of defendant O'Hearn?

18 MR. BARRETT: Yes, your Honor. Thank you. I'm not
19 opposed to a continuance either. I'm waiting to hear after the
04:12 20 U.S. government responds to the brief that you mentioned
21 earlier for the motion to suppress. I do believe that we will
22 be entering into a plea agreement. Discussions have been had.
23 We're not quite there yet. It really depends on what happens
24 with the motion to suppress that you mentioned earlier. My
25 client does have some health issues. He is detained. We're

1 also trying to work through that right now. To answer your
2 question, not opposed to a continuance. I would think probably
3 two to three months would be the duration.

4 THE COURT: I did not record that your client is also
5 incarcerated, is that correct?

6 MR. BARRETT: That's correct, your Honor.

7 THE COURT: Does that mean, Miss Porter, four are
8 incarcerated?

9 MS. PORTER: Sorry, your Honor. That was my fault. I
04:12 10 had forgotten. Mr. O'Hearn had been out on release of
11 conditions and then violated those conditions and then was
12 detained eventually. So he has been in custody for the last
13 year but not for the duration of the case.

14 THE COURT: Finally, Mr. Day, on behalf of defendant
15 Lua.

16 MR. DAY: Yes, your Honor. Ms. Lua and I have no
17 objection to a continuance. She's not being held in custody.
18 In fact, she's in California on conditions of release. I did
19 obtain some additional information from the government this
04:13 20 morning in terms of device extractions that she and I are in
21 the process of reviewing. We have no objection to a
22 continuance.

23 THE COURT: All right. Counsel, just earlier this
24 afternoon I agreed on a multi-defendant criminal trial for, I
25 believe it was March 6, Christine?

1 THE CLERK: Yes, Judge. It's March 11 is the Monday.

2 THE COURT: That's a two-week trial, was it not?

3 THE CLERK: Yes.

4 THE COURT: How many defendants in that one?

5 THE CLERK: Two.

6 THE COURT: What was the date of filing of that one?

7 THE CLERK: Give me one moment. It's a 2022 case.

8 THE COURT: I think it was too.

9 It sounds like everybody would be in favor of a March
04:14 10 trial except perhaps Mr. Alkayisi. Mr. Shea mentioned his
11 religious problem.

12 What about April, Christine?

13 THE CLERK: Sure. Let me look here. You'll be away
14 the end of March. April 1 or 8 appear to be okay.

15 THE COURT: Why don't we do it on April Fool's Day,
16 April 1.

17 MS. PORTER: Your Honor, I'm sorry to interrupt. I
18 wasn't familiar myself with the Ramadan schedule, but Google
19 tells me that it runs through April 9. It is a month long.

04:15 20 THE COURT: Well, that will be the government's case.
21 He will be hungry during the government's case but he'll be
22 able to participate perhaps after that, right?

23 MR. SHEA: If we only have one week after, we would be
24 close to clear of it.

25 THE COURT: Let's try April 1 for the trial. What is

1 the expected length of this trial, Miss Porter?

2 MS. PORTER: I think it's at least two weeks, your
3 Honor.

4 THE COURT: Okay. With four or five defendants, how
5 many witnesses are you going to have?

6 MS. PORTER: Hard to say, your Honor. At this time,
7 somewhere between 10 and 15.

8 THE COURT: Okay.

9 MS. PORTER: Potentially more depending on chemists
04:16 10 and stipulations.

11 THE COURT: All right. We'll schedule it for Monday,
12 April 1, 2024.

13 Backing up with such a large case, I'm going to go a
14 little broader in terms of the time that I want. I want in
15 limine motions six weeks ahead of time, so by the middle of
16 February.

17 Give me a Monday in the middle of February, Christine.

18 THE CLERK: I think the middle of February would be
19 February 12, or if you did a week later, it would be probably
04:17 20 the 20th because the 19th is the holiday.

21 THE COURT: Let's say on February 20 in limine motions
22 are due. They would be responded to by two weeks later but not
23 the Tuesday, the Monday. That would be March 4, oppositions to
24 in limine motions. And then, on that day, which is four weeks
25 before trial, let's say March 11 I will want your list of

1 witnesses and exhibits and then on the 18th, two weeks before
2 trial, oppositions to the opponent's list of witnesses or
3 exhibits and exhibits and your first effort at requests for
4 instructions to the jury, which of course can be supplemented
5 during the course of trial, but I want your first effort two
6 weeks before trial. Also on that day, proposed questions for
7 the voir dire jury panel and a verdict form. I believe those
8 are the variables I need.

9 We have to also schedule a final pretrial conference,
04:18 10 which would be probably the week before. I'm away part of that
11 week. What about the Monday or Tuesday before the trial?

12 THE CLERK: I think you may be at a different
13 conference that day. The First Circuit judges workshop.

14 THE COURT: All right. Give me a time when I'm not
15 there.

16 THE CLERK: The week prior?

17 THE COURT: Sure.

18 THE CLERK: Why don't we say, Thursday, March 21 at
19 3 p.m.

04:19 20 THE COURT: Thursday, March 21 at 3 p.m. for a final
21 pretrial conference.

22 Any problem with any of those dates, counsel?

23 MS. PORTER: No, your Honor.

24 MR. SHEA: Just getting back to the trial starting
25 during Ramadan, I have an objection. I have no objection to

1 the continuance.

2 THE COURT: Okay. I'm sorry, Mr. Shea, about that.
3 I'm cognizant of a whole bunch of other schedules that have to
4 be inserted. I'm just hopeful it will not be too disruptive.
5 If you have a problem that you want to address formally by a
6 motion, I will hear you, but in the meantime, I'm going to go
7 with these dates.

8 MR. GARRITY: Your Honor, can I just?

9 THE COURT: Yes. Go ahead, Mr. Garrity.

04:20 10 MR. GARRITY: Even though I expect Mr. Klotz to
11 resolve by way of a plea, so the Court is aware, in the off
12 chance, I don't expect this, but if Mr. Klotz wants to go to
13 trial, I just had a two-week trial scheduled with Judge Talwani
14 yesterday starting for April 1. That client's incarcerated.
15 On March 21, I'm on a cruise ship, but like I say, I think it
16 will be a plea most likely.

17 THE COURT: Why don't you let us know as timely as you
18 can if there's further problem.

19 MR. GARRITY: I will.

04:20 20 THE COURT: I do need to be concerned about the Speedy
21 Trial Act. Apparently, there has been some confusion about
22 prior exclusions of time. I don't know if counsel agrees with
23 that, but my Clerk seemed to think that there is some sort of a
24 discrepancy with what time has been excluded.

25 What I would propose is that the government file a

1 motion to exclude all time from December 6, 2022 and June 12,
2 2023 and then again all time between today's date and April 1,
3 2024 in the interest of justice and under the Speedy Trial Act.

4 Any problem with that from any counsel?

5 MR. KRASNOO: Not for Mr. Keleman, your Honor.

6 THE COURT: I don't hear any objections, so with the
7 government being good enough to file that motion in which all
8 eight defendants will join, do I hear any dissent from that?
9 Okay.

04:22 10 Does that take care of all of the problems that we
11 were concerned about?

12 MR. KRASNOO: Just a point of clarification, your
13 Honor. I didn't get the time for the conference on March 21,
14 but also, would that be by Zoom or in person?

15 THE COURT: The final pretrial conference I want
16 counsel here. There are too many matters that need to be
17 resolved in the courtroom and about the courtroom technology.
18 I am a fan of Zoom technology in all other instances, but when
19 we get to jury trials and we get the final pretrial
04:22 20 conferences, I want counsel here. So that one I need you here.
21 Okay? The time was 3 p.m.

22 Anything else that needs to come to my attention
23 before we adjourn for the day?

24 MS. PORTER: No, your Honor.

25 THE COURT: Thank you, counsel. We're adjourned.

1 Thank you.

2 (Adjourned, 4:23 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I, Kristin M. Kelley, certify that the foregoing is a
correct transcript from the record of proceedings taken
September 14, 2023 in the above-entitled matter to the best of
my skill and ability.

/s/ Kristin M. Kelley

October 29, 2024

Kristin M. Kelley, RPR, CRR
Official Court Reporter

Date